



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 28, 1995

Mr. Jeff B. McDonald
Director, Hearings & Compliance
Texas State Board of Medical Examiners
P.O. Box 149134
Austin, Texas 78714-9134

OR95-146

Dear Mr. McDonald:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 30406.

The Texas State Board of Medical Examiners (the "board of examiners") has received a request from the Texas Higher Education Coordinating Board (the "coordinating board") for "all Texas licensed physicians, regardless of status or practice location and include gender and ethnicity." By reference to an argument that the board of examiners submitted to this office in 1993 in response to a similar request, you object to release of the requested gender and ethnicity information and claim that section 552.101 of the Government Code excepts it from required public disclosure.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You have not cited, nor are we aware of, any law that makes the requested gender and ethnicity information confidential. Moreover, we believe that neither

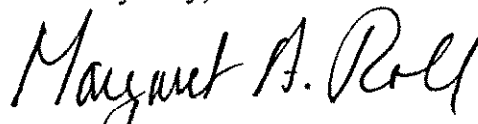
¹You indicate that the requested gender and ethnicity information "is solicited with the statement 'For Statistics Only'" and was collected "via annual registration applications with the statement 'Voluntary' to describe the request for information." We note that information is not confidential under the Open Records Act merely because the person providing the information anticipates that it will be kept confidential, nor is information excepted from disclosure under the Open Records Act merely because it is submitted on a voluntary basis. Open Records Decision Nos. 575 (1990); 479 (1987). Furthermore, a governmental body may not agree to keep information confidential unless a statute specifically authorizes it to do so. Open Records Decision Nos. 437 (1986) at 4; 414 (1984).

common-law nor constitutional privacy excepts the requested gender and ethnicity information from required public disclosure. Information may be withheld under common-law privacy if it meets the criteria the Texas Supreme Court articulated for section 552.101 in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under *Industrial Foundation*, a governmental body must withhold information on common-law privacy grounds only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. The right to privacy guaranteed under the United States Constitution protects two related interests: (1) the individual's interest in independence in making certain kinds of important decisions, and (2) the individual's interest in avoiding disclosure of personal matters. See Open Records Decision No. 478 (1987) at 4. The first interest applies to the traditional "zones of privacy," that is, marriage, procreation, contraception, family relationships, and child rearing and education. See Open Records Decision No. 447 (1986) at 4. The second protects information by employing a balancing test that weighs the privacy interest against the public interest. Open Records Decision No. 478 (1987) at 4. It protects against "invasions of privacy involving the most intimate aspects of human affairs." Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)).

We conclude that a person's gender or ethnicity is not intimate or embarrassing and, in some instances, may be of legitimate public concern. In addition, a person's gender or ethnicity does not fall within any of the "zones of privacy" or involve the most intimate aspects of human affairs. Accordingly, the board of examiners may not withhold the requested information under section 552.101 of the Government Code and must release the requested information in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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Ref.: ID# 30406

Enclosures: Submitted documents

cc: Ms. Stacey Silverman
Texas Higher Education Coordinating Board
P.O. Box 12788
Austin, Texas 78711
(w/o enclosures)